

File #115756-03/lfp

SCF CASE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
CURTIS PAYNE,

Plaintiff,

-against-

COMPLAINT

UNITED STATES OF AMERICA,

Defendant.

-----x

Plaintiff, complaining of the defendant, by attorneys,
FINE, OLIN & ANDERMAN, LLP, respectfully shows this Court and
alleges, upon information and belief, the following:

JURISDICTION AND VENUE

1. That at all times hereinafter mentioned, the
plaintiff was and still is a resident of the County of Nassau,
State of New York, United States of America.

2. That this action is one brought against UNITED STATES
OF AMERICA under and pursuant to 28 USC 1346 (b) and 2671-2680,
the Federal Tort Claims Act for the negligent acts of an agent,
servant and/or employee of the defendant, UNITED STATES OF
AMERICA.

3. Venue is based on 28 USC 1402(b) in that the acts or omissions complained of occurred in the Judicial District for the Southern District of New York.

4. That the acts of negligence of the agent, servant and/or employee of the defendant, UNITED STATES OF AMERICA, arose on or about the 15th day of March, 2017.

5. That a period of six (6) months has elapsed from the filing of a Notice of Claim and the Claim has not be adjusted nor has there been a denial submitted.

6. On October 3rd, 2018 a claim form 95 was served upon the United States Postal Service and on the Attorney General by certified Mail.

7. More than six months has elapsed since the filing of the claim and the claimant has complied with all requests set forth by the government and the United States has not formally adjusted the claim nor denied the claim in writing.

8. For the above reasons jurisdiction exists pursuant to 28 USC 1346(b).

9. That all prerequisites for filing this suit have been complied with by the plaintiff pursuant to 28 USC 2401.

STATEMENT OF FACTS

10. That at all times hereinafter mentioned, upon information and belief, the defendant, UNITED STATES OF AMERICA, was the owner of the premises located at 317 9th Avenue, between West 28th Street and West 29th Street, and was responsible for the maintenance and repair of the abutting sidewalk, including the area of the sidewalk approximately 15 feet north of the light pole in front of 317 9th Avenue and approximately 70 feet south of the fire hydrant in front of 317 9th Avenue near corner of West 29th Street and approximately 6 feet east of the building line and approximately 12 feet west of the curb, in the Borough of Manhattan, County of New York, State of New York.

11. That at all times hereinafter mentioned, upon information and belief, the defendant, UNITED STATES OF AMERICA, was the lessor of the aforesaid sidewalk.

12. That at all times hereinafter mentioned, upon information and belief, the defendant, UNITED STATES OF AMERICA, was in possession and control of the aforesaid sidewalk.

13. That at all times hereinafter mentioned, upon information and belief, the defendant, UNITED STATES OF AMERICA, maintained the aforesaid sidewalk.

14. That at all times hereinafter mentioned, upon information and belief, the defendant, UNITED STATES OF AMERICA,

controlled the aforesaid sidewalk.

15. That at all times hereinafter mentioned, the sidewalk in front of the premises located at 317 9th Avenue, between West 28th Street and West 29th Street, approximately 15 feet north of the light pole in front of 317 9th Avenue and approximately 70 feet south of the fire hydrant in front of 317 9th Avenue near corner of West 29th Street and approximately 6 feet east of the building line and approximately 12 feet west of the curb, in the Borough of Manhattan, County of New York, State of New York, was the situs of the within incident.

16. That on or about the 15th day of March, 2017, this plaintiff was lawfully upon the aforesaid sidewalk.

17. That on or about the 15th day of March, 2017, while this plaintiff was walking on the aforesaid sidewalk, he was caused to be precipitated to the ground, thereby sustaining severe and serious personal injuries.

18. The accident and injuries alleged herein were caused by the negligent, wanton, reckless and careless acts of the defendant, UNITED STATES OF AMERICA, its agents, servants and/or employees.

CAUSE OF ACTION

19. That the defendant, UNITED STATES OF AMERICA, its agents, servants and/or employees were negligent, wanton,

reckless and careless in allowing, causing and/or permitting the aforesaid sidewalk to be, become and remain in an icy, dangerous and hazardous condition to persons lawfully thereon; in causing and/or permitting dangerous accumulations of ice in and upon said sidewalk so as to constitute danger to persons upon said sidewalk; in allowing, causing and/or permitting dangerous, hazardous and/or unsafe conditions to exist on the aforesaid sidewalk; in failing to properly and adequately sand and/or salt the sidewalk and/or use another type of traction to avoid the accident herein; in failing to properly remove and/or provide for the proper removal of ice from said sidewalk; in failing to fence off, barricade and/or by some other means block off the area of the dangerous, hazardous and unsafe conditions; in creating a trap; in failing to properly maintain, check and/or inspect said sidewalk; in allowing, causing and/or permitting the ice to thaw and then refreeze on said sidewalk; in creating and/or exacerbating the ice condition by the negligent and inadequate manner snow had been shoveled from the sidewalk; in failing to adequately remove snow and ice from the sidewalk even though the snow was compressed by pedestrians walking upon the sidewalk which thereby caused and/or contributed to the ice condition upon which plaintiff fell; in failing to provide proper and adequate warnings to persons on the sidewalk of the existing conditions; in acting with reckless disregard for the

safety of others; in failing to take those steps necessary to avoid the contingency which occurred; in failing to use that degree of caution, prudence and care which was reasonable and proper under the controlling circumstances; in improperly hiring and continued employment of inept, incompetent and unskilled agents, servants and/or employees, and the defendants, their agents, servants and/or employees were in other ways being negligent, wanton, reckless and careless.

20. That the defendant, its agents, servants and/or employees had actual and/or constructive notice of the dangerous and defective conditions in that the conditions existed for a sufficient length of time prior to the happening of the within accident and in the exercise of reasonable care, the defendant, its agents, servants and/or employees could have and should have had knowledge and notice thereof, and further, the defendant, its agents, servants and/or employees created said conditions.

21. That by reason of the foregoing, this plaintiff was caused to sustain severe and serious personal injuries to his mind and body, some of which, upon information and belief, are permanent with permanent effects of pain, disability, disfigurement and loss of body function. Further, this plaintiff was caused to expend and become obligated for diverse sums of money as a result of this accident; the plaintiff further was caused to lose substantial periods of time from his

normal vocation, and upon information and belief, may continue in that way into the future and suffer similar losses.

REQUEST FOR DAMAGES

22. That by reason of the foregoing, this plaintiff was damaged in a sum of FIVE MILLION (\$5,000,000.00) DOLLARS.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment against the defendant as follows:

A. The sum of \$5,000,000.00, as compensatory damages, together with the costs and disbursements of this Action; and

B. Any other relief this Court finds to be just, proper and equitable.

Yours, etc.,

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BY: *L D L*
LAWRENCE LISSAUER, ESQ.
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(Bar No.: 6536)

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